

STATE OF INDIANA )  
 )  
COUNTY OF LAKE )

LAKE SUPERIOR COURT  
CIVIL DIVISION, ROOM FOUR  
GARY, INDIANA  
Cause # 45D04-1506-CT-00098

1710-CT-288

ERIC PORTERFIELD )  
Plaintiff )

vs. )

CAVANAUGH'S SPORTS BAR & )  
EATERY LTD )  
Defendant )

Filed in Open Court

MAY 11 2018

Bree P. P.~  
JUDGE

SUPERIOR COURT OF LAKE COUNTY

**ORDER DENYING MOTION FOR SUMMARY JUDGMENT**

A hearing was held on May 2, 2018 on a motion for summary judgment filed by CAVANAUGH'S SPORTS BAR & EATERY LTD (hereinafter "CAVANAUGH'S"), on January 31, 2018, a response in opposition filed by the Plaintiff, ERIC PORTERFIELD (hereinafter "PORTERFIELD"), on April 16, 2018, and a reply / motion to strike filed on April 30, 2018. The Court read all of the foregoing, heard argument, took all matters **UNDER ADVISEMENT**, and then Ordered:

**APPLICABLE LAW**

1. Drawing all reasonable inferences in favor of the non-moving party, summary judgment is appropriate if the designated evidentiary matters show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Williams v. Tharp, 914 N.E.2d 756, 761 (Ind. 2009).
2. The initial burden is on the summary judgment movant to demonstrate the absence of any genuine issue of fact as to a determinative issue, at which point the burden shifts to the non-movant to come forward with contrary evidence showing an issue for the trier of fact. Id. at 761-762.
3. Summary judgment is a high bar for the moving party to clear and requires him or her to affirmatively negate an opponent's claim. Hughley v. State, 15 N.E.3d 1000, 1004 (Ind. 2014).

4. Summary judgment is rarely appropriate in negligence cases because they are particularly fact sensitive and are governed by a standard of the objective reasonable person, which is best applied by a jury after hearing all the evidence. Duby v. Woolf, 76 N.E.3d 190, 196 (Ind. Ct. App. 2017).
5. Summary judgment is a lethal weapon, and courts must be mindful of its aims and targets and beware of over-kill in its use. Mundia v. Drendall Law Office PC, 77 N.E.3d 846, 853 (Ind. Ct. App. 2017). Indiana imposes an onerous burden on a party moving for summary judgment, and requires the moving party to affirmatively negate an opponent's claim. Id.
6. In determining whether a party's evidence creates a genuine issue of material fact so as to preclude summary judgment, a "genuine issue" is one upon which the parties proffer differing accounts of the truth, or as to which conflicting inference may be drawn from the parties' consistent accounts, and a "material fact" is one that affects the outcome of the case. Lyons v. Richmond Community School Corporation, 19 N.E.3d 254 (Ind. 2014).
7. Summary judgment should not be entered where material facts conflict or where conflicting inferences are possible; summary judgment is not to be used as an abbreviated trial. Golba v. Kohl's Dept Store Inc., 585 N.E.2d 14, 15 (Ind. Ct. App. 1992).
8. In the context of evaluating proximate causation our courts have long held that foreseeability is a question of fact for the jury to decide. Goodwin v. Yeakle's Sports Bar and Grill, 62 N.E.3d 384, 389 (Ind. 2016). Foreseeability is not only a component of the proximate cause element of negligence, it is also a component of the duty element of negligence as well. Id. Whether a duty exists is a question of law for the court to decide. Id.
9. A question is one of law, but the answer may depend upon the resolution of disputed facts. See Lyons v. Richmond Community School Corporation, 19 N.E.3d 254, 262 (Ind. 2014).

#### **PERTINENT FACTS**

10. Each side advocated a different version of the events of December 10, 2006.
11. The parties differ as to exactly where the fight took place, differ as to what happened during the fight, differ as to who started the incident, and differ as to what took place within the incident.

12. The only agreed facts were:
- A. PORTERFIELD had been a patron of CAVANAUGH'S on the night in question.
  - B. Some type of altercation took place between patrons, including PORTERFIELD.
  - C. In the altercation, PORTERFIELD was struck by another patron.
  - D. The entire incident took place outside the tavern.
  - E. The incident took place shortly after the tavern closed, while staff members were present in the tavern, near the doorway, and in the parking lot.

### ARGUMENT

13. CAVANAUGH'S argued that it owed no duty to PORTERFIELD because it could not have:
- A. foreseen the violent behaviors of its patrons, leaving the facility; and
  - B. therefore could not have taken precautions to prevent the violence that PORTERFIELD alleged.

### ANALYSIS

14. This Court's analysis began with the Court drawing all facts and reasonable inferences in favor of PORTERFIELD and against CAVANAUGH'S.
15. The Court then reached into the brief and designated materials of both parties to prepare a summary of the agreed facts.
16. The Court found that the facts presented by CAVANAUGH'S and the facts presented by PORTERFIELD were vastly different, leaving the Court with the belief that there truly were few, if any, agreed material facts.
17. While it is for the Court to determine whether CAVANAUGH'S owed a duty to PORTERFIELD, there simply were not enough agreed material facts presented, upon which the Court could make such a determination.
18. Given the need for facts here, and the preference of both our Supreme Court and our Courts of Appeal, the Court found this fact-sensitive case should be developed at trial and determined by the finder of fact.
19. The Court found that CAVANAUGH'S failed to meet its initial burden of demonstrating a *prima facie* case / the absence of any genuine issues of fact, such that the Court could find summary judgment appropriate.

**WHEREFORE**, for all of the foregoing reasons:

1. CAVANAUGH'S' motion for summary judgment was **DENIED**.
2. The Court did not consider the "police run report reports" that were the subject of CAVANAUGH'S' motion to strike in its decision. Accordingly, the Court found that motion **MOOT**.
3. The Court served each party with a copy of this order via email pursuant to Trial Rules 3.1(A)(4) and 72(D).

SO ORDERED this MAY 11 2018.



**BRUCE D. PARENT, JUDGE**

Lake Superior Court, Civil Division, Room Four

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